THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.Nos. 21802 and 20367 OF 2005

Dated 07-10-2005

BETWEEN:

Major B.G.Viswas, Srikakulam District

…Petitioner

And

The President and Correspondent,

Srikakulam District and others

…Respondents

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.Nos. 21802 AND 20367 OF 2005

COMMON JUDGMENT:

Both the writ petitions are filed by the same petitioner, in relation to the disciplinary proceedings initiated against him. Hence, they are disposed of through common judgment.

The petitioner was initially appointed as a Lecturer in Commerce in Sri Bala Siva Yogendra Maharaj, the 1st respondent.
On 06-07-1994 he was selected and appointed as Principal of the College. The college is admitted into grant-in-aid. The appointment of the petitioner, as Principal, was approved by the competent authority, on 11-07-1994.

The petitioner was placed under suspension by the 1st respondent, through proceedings dated 23-04-2005, on the allegations that, he did not get the accounts of unaided sections of the college audited, for certain period; he was responsible for cancellation of the college as examination center for the year 2004-2005; the omission on his part, to submit the practical marks for the decree students, resulted in non-publication of the results; he absented himself from his duties without leave or permission of the management, and that he made certain press statements, touching upon the reputation and integrity of the administration of the college. He filed W.P.No.9817 of 2005, challenging the same.

The petitioner approached the Regional Joint Director of Higher Education, Rajahmundry, stating that he was kept under suspension for a period, exceeding two months, in contravention of the provisions of Section 79 of the A.P. Education Act, who in turn issued orders dated 15-07-2005, directing the reinstatement of the petitioner. The petitioner claims to have assumed charge as Principal on 18-07-2005.

The 1st respondent appointed Sri R.Jagan Mohan, a retired District and Sessions Judge, the 2nd respondent in both the writ petitions, as an inquiry officer, vide proceedings dated 18-05-2005. The petitioner filed W.P.No.20367 of 2005,

challenging the appointment of the 2nd respondent an enquiry officer. According to the petitioner, the relevant Rules do not permit the appointment of an outsider, as an enquiry officer, and that despite his complaint, as to hardship and harassment; he was required to attend the enquiry at Visakhapatnam.

The 2nd respondent proceeded with the enquiry and submitted a report, dated 17-09-2005, holding that the charges levelled against petitioner were proved. Based on the report submitted by the 2nd respondent, the 1st respondent issued a show cause notice dated 28-09-2005, requiring the petitioner to explain as to why he should not be dismissed from service. W.P.No.21802 of 2005 is filed against this show cause notice.

Petitioner contends that through interim orders dated 15-09-2005, this Court directed the respondents 1 and 2 herein, to defer the enquiry for a period of three weeks, and despite the same, they have proceeded with the enquiry. He also urged that the 2nd respondent submitted an *ex parte* report, without giving any opportunity to the petitioner, and that his very appointment is contrary to Rules. He contends that the report submitted by the 2nd respondent cannot constitute the basis for the proposed action.

Sri M.Kesava Rao, learned counsel for the petitioner submits that the very appointment of the 2nd respondent, as an enquiry officer, is contrary to the A.P. Private Institutions Employees (Discipline and Control) Rules, 1983 (for short 'the Rules'). Placing reliance upon a judgment of this Court in ***Vivek Vardhini Education Society v. State of A.P.***[1], he contends that an outsider cannot be appointed as an enquiry officer. He further submits that even otherwise, the 2nd respondent did not give adequate opportunity to the petitioner, to participate in the enquiry.

Notices were served in W.P.No.20367 of 2005. On behalf of the respondents 1 and 2, Sri P.Gangaiah Naidu, learned Senior Counsel is appearing. Though W.P.21802 of 2005 was listed for admission, for the first time, he made submissions in that also, and agreed for disposal for both the writ petitions at the admission stage. He contends that there is no provision in the Rules which prohibits appointment of a suitable person, as an enquiry officer. He submits that with a view to hold the enquiry in most judicious and proper manner, the 1st respondent has chosen the 2nd

respondent, who is a retired District and Sessions Judge, as an enquiry officer. He contends that the petitioner cannot challenge the same, or raise any objection.

Learned Government Pleader for Higher Education submits that in view of the judgment of this Court in ***Vivek Vardhini Education Society v. State of A.P.***, (Supra), the appointment of the 2nd respondent, as enquiry officer, cannot be sustained.

Though several contentions were advanced, on behalf of the petitioner and 1st respondent, touching on facts, relating to the case, this Court does not find the necessity to deal with the same. Both the writ petitions can be disposed of by examining the short question, as to whether the appointment of the 2nd respondent, as enquiry officer, accords with the Rules. If his appointment is upheld, the further questions, as to whether the petitioner was given any opportunity, to participate in the enquiry or, as to whether the report of the enquiry officer, as well as the impugned show cause notice suffer from any illegality or infirmity, would arise. On the other hand, if the appointment is held to be invalid, the proceedings have to be conducted *do novo*.

The Government of Andhra Pradesh framed the Rules referred to above, in exercise of power under the A.P. Education Act. The said Rules regulate the disciplinary proceedings against employees of the private educational institutions. It is not in dispute that the 1st respondent is a private educational institution and that Rules apply to it. Rule 7(2) of the Rules enables the management of the private educational institution, to appoint an inquiring authority, if it is proposed to conduct an oral enquiry. The relevant portion of the Rule, omitting the other portion, which is not necessary for these writ petitions, reads as under:

> "If an oral enquiry is desired by the person charged, the Management shall appoint an inquiring authority who shall be superior in rank to the charged person, to conduct the enquiry…."

The question as to whether an Advocate can be appointed as an enquiry officer in the disciplinary proceedings against an employee of the private educational institution, was considered by a Division Bench of this Court in ***Vivek Vardhini Education Society v. State of A.P.*** After extracting the relevant portion of

the Rules, this Court held as under:

> "When sub-rule (2) speaks about an authority superior in rank to the charged person, it clearly means an officer or a teacher in the establishment of the education society concerned who is superior in rank to the charged person. By no stretch of imagination, it can be said that an advocate who is undoubtedly a stranger to the Management could be considered to be an authority superior in rank to the Charged Officer. Comparison between an advocate and the Charged Officer would never arise in the context of sub-rule (2) of Rule 7."

The 2nd respondent, who is a retired Judge, stands almost on the same footing, as an Advocate, in this context. His appointment is contrary to Rule 7(2) of the Rules, as interpreted by this Court. Hence, the order of appointment, which is assailed in W.P.No.20367 of 2005 is liable to be set aside.

The impugned show cause notice dated 28-09-2005, which is challenged in W.P.No.21802 of 2005 is based upon the report submitted by the 2nd respondent. Therefore, the show cause notice suffers from a serious infirmity.

Sri P.Gangaiah Naidu, learned Senior Counsel, submits that the petitioner has created several hurdles in the enquiry, on one pretext or the other, and in the meanwhile, the administration of the college is adversely affected. He contends that the petitioner has not been reinstated into service, due to the delicate circumstances, prevailing in the college, and that the 1st respondent is prepared to pay him the full salary, for a period of two months, if he is prepared to co-operate with the enquiry to be conducted through another enquiry officer, who would be appointed in accordance with Rule 7(2) of the Rules.

Sri M. Kesava Rao, learned counsel for the petitioner, submits that his client has always been co-operating with the enquiry and that it is the 1st respondent who denied him the opportunity.

Having regard to the facts and circumstances of the case,

a. the writ petitions are allowed. Consequently, the order appointing the

2nd respondent as enquiry officer, the report submitted by him, and the show cause notice dated 28-09-2005, issued by the 1st respondent; are set aside.

b. It shall be open to the 1st respondent to appoint another enquiry officer in accordance with Rule 7 (2) of the Rules and to conclude the disciplinary proceedings against the petitioner by 31-12-2005.

c. Having regard to the special circumstances that prevail in the college, it is directed that the petitioner shall be entitled to be paid full salary for this period, but he shall not be entitled to function as Principal, and that he shall co-operate with the 1st respondent at various stages in the enquiry. Further continuance of the petitioner would depend upon the outcome of the disciplinary proceedings.

d. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt: 07-10-2005.

**KO*